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ABSTRACT

The National Advisory Council on Vocational Education endorses the principle of Federal regulation of proprietary vocational institutions at this time. It supports the general thrust of the Federal Trade Commission (FTC) proposed rule covering advertising claims, disclosures to individuals, a contractual cooling-off period, and cancellations and refunds but proposes amendments which would selectively revise the advertising provisions; strengthen the individual disclosure provisions to further aid the students; and make the provisions relating to the cooling-off period, calcellations, and refunds more equitable to the schools. (A five-page addendum presents a detailed critique of selected sections of the proposed FTC rule.) (AG)

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NATIONAL ADVISORY COUNCIL ON VOCATIONAL EDUCATION

Testimony On The Proposed Regulation Of
Proprietary Vocational Schools

Before

THE FEDERAL TRADE COMMISSION

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION
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December 19, 1974

The National Advisory Council on Vocational Education believes that the private sector performs an important and useful function in educating our youth for future vocational needs. A recent study by Wellford Wilms of the University of California at Berkeley, indicates that proprietary, profit-making institutions do just about as well as community colleges and other public schools in teaching their students the skills that will lead to employment in the marketplace -- although there is much room for improvement in both public and private sectors. The majority of private vocational schools are a respectable part of our educational structure. But if steps are not taken to curb the excesses of a minority, their behavior will be attributed to all. Firm regulatory steps must be taken to check the abuses and prevent severe loss of confidence in proprietary schools on the part of the American people.

Ideally, regulation might extent to all post-secondary vocational schools -- public, private non-profit, and proprietary alike. In fact, our colleges and universities, indeed all our institutions of higher education, should be held to the same high standards of honesty, openness, and disclosure.

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The Federal Trade Commission, however, exercises jurisdication and control over private institutions alone. The proposed rule is specifically oriented toward proprietary vocational schools. This is not at all unreasonable, since public schools can be held accountable for misrepresentation and other dubious practices in diverse ways -- e.g., through taxpayer probes, parent and student suits, and -- indirectly -- the electoral process. The proprietary schools are not similarly accountable, and the Federal Government has a special interest in their success. In Fiscal '74, only 39 percent of all federally insured student loans went to proprietary school students, yet these accounted for 59 percent of all defaults. These are ominous figures that require remedial action.

Despite this federal interest, we believe that a good deal of regulatory power should be reserved to the states which exercise primary authority over education under the Constitution. States and localities are closer to the problems, and hence, more apt to devise ingenious solutions. On the other hand, a number of proprietary schools operate in several states, or even -- as in the case of correspondence schools -- nationwide. Furthermore, recent newspaper exposés have received national publicity and have directed the attention of people all over the country to the scandalous mis-representations of some proprietary schools scattered throughout the United States.

Under these circumstances, the National Advisory Council on Vocational Education endorses the principle of federal regulation of proprietary vocational institutions at this time. We strongly support

the general thrust of the proposed FTC rule covering advertising claims, disclosures to individuals, a contractual cooling-off period, and cancellations and refunds. We believe, however, that some important modifications are needed to make the proposed rule both workable, and just.

We shall merely summarize our proposed amendments here. A more detailed analysis may be found in the attached addendum to this testimony.

With respect to advertising claims, we believe that general statements as to market demand, and average salaries, should be restricted but not prohibited outright. Some general claims as to both national and local employment opportunities can be documented, and might well prove useful to the prospective student. Secondly, requirements for the verification of specific claims concerning the achievements of schools should be simplified, and students should be encouraged to provide their schools with the requisite information about their employment history for a reasonable period after graduation. Thirdly, the prescribed format for making specific advertising claims should be revised and simplified, with a view ot highlighting easily comprehensible placement and drop-out rates, instead of concealing them in the coils of a complex statistical apparatus.

We strongly endorse the affirmative disclosure of drop-out and placement records to each individual student. We believe, however, that this provision should be strengthened by requiring that such disclosure be made before, not after, the student signs the contract. Together with the contract, the student should be required to return a handwritten

statement to assure an understanding of the information provided. In addition, this affirmative disclosure provision should not be limited to those schools which have made specific representations to the students. While new schools and courses should be exempted, as the proposed rule provides, we believe that all established schools should be required to disclose drop-out and placement statistics.

While the individual disclosure provisions of the proposed rule are weak, the Council believes that the provisions relating to the ten-day cooling-off period are -- in contrast -- so strong as to be unfair to the schools. We believe that when a student signs a contract, a serious legal obligation is taken that should require no reaffirmation. The provision that a contract would not be binding unless the student reaffirmed acceptance within ten days would impose unnecessary and inequitable expenses on proprietary schools, the majority of which are not guilty of any wrongdoing. As a substitute, we propose that each student be given the right to cancel the contract within ten days, during which time all oral and personal, as well as written, solicitations by the school should be prohibited. This would place a minimal burden upon the student, allow time for reconsideration of any commitment free of such pressures, and would also -- we believe -- prevent the vast majority of "unconscionable" contracts from taking effect.

The last major provision of the proposed rule covers cancellations and refunds after the ten-day cooling-off period has expired. The FTC-proposed regulations would require a school to refund to any student who drops out at any time, a pro rata portion of the contract price -- minus a maximum registration fee of $25. In view of the fact that most of the

school's overhead and administrative, teaching, and equipment costs are fixed -- at least for the duration of the course -- we consider this unfair to the schools. We suggest that the proposed provision apply only to the first two weeks of the course, when costs are still somewhat flexible. During the remainder of the first half of the course, the drop-out should be charged a pro rata portion of the contract price, plus ten percent of the total, not to exceed $100. Students who drop out after the middle of the course -- except for emergency reasons -- should not be entitled to any refund. This would encourage students to evaluate their own progress, and to take their commitments seriously. On the other hand, schools should be required to warn students when the halfway point is near, and to provide each student with a written achievement evaluation at that time. On the basis of such a statement, a student could arrive at a well-informed decision as to whether or not continuation of the course would be worthwhile.

IN CONCLUSION, the National Advisory Council on Vocational Education would like to see the advertising provisions selectively revised, the individual disclosure provisions strengthened to further aid the students, and the provisions relating to the cooling-off period, cancellations, and refunds, made somewhat more equitable to the schools. We hope that the Federal Trade Commission will see fit to adopt our amendments to the proposed rule, and to promulgate the latter soon after public hearings have been completed. We are confident that such enlightened regulations would enable the good schools to drive out the bad. Most importantly, since disclosure indirectly would force schools to improve their performance, regulations would justify a gradual revival of public confidence in private vocational education.

ADDENDUM

Detailed Critique of Proposed FTC Rule

ADVERTISING CLAIMS

§ 438.2(a)(1) It is unfair to include a blanket prohibition against general statements regarding the market demand or average salaries for a particular occupation. Such a provision might even raise constitutional issues. Instead, such statements should be subject to the following restrictions:

(1) Any statements clearly derived from the latest edition of the Occupational Outlook Handbook, published by the Bureau of Labor Statistics, are permissible, provided they are footnoted to the source.

(2) If the local job outlook differs significantly from the national picture, this must be clearly stated in the advertisement.

(3) If (2) applies, reliable local statistics must be given in at least as much detail as the national statistics. A statement regarding the sources of these statistics and bases of any local claims must be filed with the FTC and made readily available by the school to anyone requesting it.

§ 438.2(a)(2-3) The proposedprovisions concerning specific claims as to employment opportunities and salaries are excellent in outline; the requirement that seller provide all relevant information is particularly valuable. Several specific changes, however, are desirable. The list required for verification of claims should contain only essential information, in order to minimize bookkeeping expenses. This list need only include the name of each student, the name of the employer, job title, and salary. It should not be necessary to include addresses, telephone numbers, or the date each job was obtained on the list, although these should be included in student records, and should be available to resolve any controversy that might arise. The salary could be stated in hourly, or weekly terms, as appropriate. The rule should specify what ought to be done with these lists.

In order to prevent schools, especially those without placement services, from being penalized due to lack of critical data, the school might strongly encourage students to provide such information on standard forms.

§ 438.2(a)(4) For both correspondence and residence courses:

(1) The initial employment statement should be based on the number of students completing the course, available for and actively seeking employment for three months immediately following graduation. It would be unfair to the schools to include drop-outs and students not on the job market (i.e., home economics trainees, youths choosing to continue their education, join VISTA, or the Peace Corps, or simply take a vacation) in this initial statement. Both the number of students employed, and this number as a percentage of the total seeking employment (placement rate), should be given.

(2) As in the last section, salary statements in weekly and hourly terms should be permitted. If the job does not involve full-time work, however, a statement to that effect should be included.

(3) A clear statement of the drop-out rate should be substituted for the first "percentage ratio" provision.

(4) The second "percentage ratio" provision is made unnecessary by inclusion of the placement rate under (1).

The object of these revisions is to simplify, as well as modify, the provisions of this subsection.

§ 438.2(a)(5) (Conforming amendments only): In the first sentence, "Paragraph (a)(2) to (4)" should be substituted for "Paragraph (a)(1) to (4)." The second sentence should be amended to read: "In lieu thereof, seller shall confine any <u>specific</u> representation covered .... ."

DISCLOSURE PROVISIONS

§ 438.2(b) This section should be strengthened by requiring affirmative disclosure of drop-out rates, and placement records before, not after, the student signs the contract.

The disclosure requirements in subsection (2) are substantially identical to those outlined in the section on advertising, and they should be modified in accordance with the suggestions made above under (a)(4).

The record-keeping requirements should be modified in accordance with the suggestions made above under (a)(3). The relationship between "records" and "lists" should be clarified.

§ 438.2(c) Mailing the disclosure form to the student via certified mail, return receipt requested, after the contract has been signed is both too little, and too late. The disclosure form should accompany the contract. The student should be required to return a simple statement with the contract, handwritten and signed, stating that the information provided concerning drop-out and placement rates has been received, read, and understood.

The specified disclosure form is excellent, except for one gaping loophole: if the school, in fact, has adequate statistics, but has merely kept silent and made no representation because they were unfavorable, then the school should not be allowed to make statements such as the one under (4). Admittedly, this would present some problems of enforcement, but the risk is well worth taking.

COOLING-OFF PERIOD

§ 438.2(d) A right to cancel within ten days should be substituted for a positive reaffirmation of the contract on the part of the student. A person who signs a contract normally assumes very definite and binding legal obligations. The invalidation of contracts on grounds of "unconscionability" (as a result of a gross disparity of bargaining power between seller and buyer, sometimes due to the poverty and ignorance of the latter) is still uncommon, although it is becoming more frequent. Hence, it would certainly not

be unjust to ask the student to assume the minimal burden of notifying the school within ten days of any intention to cancel the contract. A reaffirmation requirement would inequitably tip the balance against the school, and inevitably result in increased recruiting expenses that would, just as inevitably, be passed on to the study body at large.

§ 438.2(e) Only the requirement that the school not send the student any material during the cooling-off period should be retained. It should be strengthened by prohibiting the school from instituting telephone and personal -- as well as written -- contacts with the student, in order to eliminate any possibility of high pressure tactics.

CANCELLATIONS AND REFUNDS

§ 438.2(f) A proprietary school has fixed overhead and substantial recruiting and administrative costs; more importantly, it must recruit and contract with teachers before the start of any course, presumably for its duration (up to two years), and perhaps purchase additional equipment and reserve dormitory space. None of these expenses is reduced when a student drops out after the beginning of a course. Under these circumstances, it is unfair to allow the school to charge a drop-out "no more than $25" above and beyond a pro rata portion of the contract price. Perhaps this provision deserves more empirical study, but it is suggested that the proposed provision apply only to the first two weeks of classes. If a student leaves between the third week and the end of the first half of the course, a pro rata portion of the contract cost, plus ten percent of the total, not to exceed $100, should be charged. A student who leaves after more than half the course is over should not be entitled to a refund unless the departure is due to circumstances beyond the student's control (in which case the ten percent, $100 provision should apply). The school should be required to warn the student of the refund deadline within a reasonable time prior to the halfway mark. The school should also provide a written evaluation of the student's progress to date of departure so the student can make a well-informed decision on whether or not to continue the second half of the course.

This procedure would encourage students to take their commitments seriously. It would discourage those who just drag along on half-hearted efforts, wasting the

time of teachers and classmates, and possibly dropping out at the last minute when they realize they are potential flunkees.

§ 438.2(g) The provision for disclosure of cancellation and refund rights is excellent in general, but its particular should be revised in accordance with the comments made on section (f).

§ 438.2(h) This provision is satisfactory.

PACKAGE COURSES

§ 438.2(i) This provision is satisfactory.

Appendices: The last paragraph of each should be revised to provide for active cancellation, rather than reaffirmation, as suggested above under section (d).